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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

‘ĪLIO‘ULAOKALANI COALITION, a)	Civil No. 04-00502 DAE BMK
Hawai‘i nonprofit corporation; NĀ ‘IMI)	
PONO, a Hawai‘i unincorporated)	PLAINTIFFS’ STATEMENT OF
association; and KĪPUKA, a Hawai‘i)	APPEAL FROM MARCH 23, 2007
unincorporated association,)	ORDER DENYING PLAINTIFFS’
Plaintiffs,)	REQUEST FOR SUPPLEMENTAL
v.)	DISCOVERY; MEMORANDUM IN
ROBERT M. GATES, Secretary of)	SUPPORT OF APPEAL;
Defense; and PETE GEREN, Acting)	DECLARATION OF DAVID L.
Secretary of the United States)	HENKIN; EXHIBITS “1”-“10;”
Department of the Army,*)	CERTIFICATE OF SERVICE
Defendants.)	<u>Non-Hearing Motion</u>
_____)	

PLAINTIFFS’ STATEMENT OF APPEAL FROM MARCH 23, 2007 ORDER
DENYING PLAINTIFFS’ REQUEST FOR SUPPLEMENTAL DISCOVERY

* Pursuant to Federal Rule of Civil Procedure 25(d)(1), Acting Secretary of the United States Department of the Army Pete Geren is substituted for his predecessor, Francis J. Harvey.

Pursuant to Local Rule 74.1, plaintiffs ‘Īlio‘ulaokalani Coalition, Nā ‘Imi Pono, and Kīpuka (collectively, “the Hawaiian Groups”) hereby submit this Statement of Appeal regarding Magistrate Judge Barry M. Kurren’s March 23, 2007 Order Denying Plaintiffs’ Request For Supplemental Discovery. Magistrate Kurren issued his order in response to the Hawaiian Groups’ request to establish deadlines for defendants Robert M. Gates, Secretary of Defense, and Pete Geren, Acting Secretary of the United States Department of the Army, (collectively, “the Army”) to provide supplemental disclosures pursuant to Federal Rule of Civil Procedure 26(e)(2) regarding material changes in the Stryker-related training the Army intends to conduct in Hawai‘i. Such supplementation is vital to ensure the Court is able to “enforce[] the policy choices articulated in [the National Environmental Policy Act (“NEPA”)] and strike[] the appropriate balance” with respect to injunctive relief pending the Army’s compliance with NEPA. 12/29/06 Order at 54.

Magistrate Kurren’s denial of the Hawaiian Groups’ request on the grounds that the time for discovery has passed conflicts with the Court’s assurances at the November 20, 2006 status conference that, following expeditious entry of an interim injunction, the Hawaiian Groups would “be permitted ... substantial additional discovery.” Exh. 1: 11/20/06 Tr. at 26:20-21. Moreover, Magistrate Kurren erred in concluding that requiring the Army to disclose material changes in its training plans would constitute impermissible “micro-management.” 3/23/07

Order at 3. Without accurate information regarding the training the Army plans to conduct, the Court cannot tailor mitigation measures needed to “protect[] cultural and environmental resources from harm.” 12/29/06 Order at 56. This is not improper meddling in the Army’s affairs, as Magistrate Kurren incorrectly suggested, but, rather, fulfills the judiciary’s responsibility to ensure compliance with Congress’s will in enacting NEPA.

The Hawaiian Groups respectfully submit that Magistrate Kurren’s decision was clearly erroneous and contrary to law. They ask the Court to grant this appeal and issue an order requiring the Army to provide timely supplementation of its prior disclosures regarding the Stryker-related training it plans to conduct in Hawai‘i prior to complying with NEPA.

This motion is based on Federal Rule of Civil Procedure 7, Local Rule 74.1, the attached memorandum, declaration and exhibits, the pleadings on file herein, and such other matters as may be presented to the Court.

DATED: Honolulu, Hawai‘i, April 2, 2007.

EARTHJUSTICE
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By: /s/ David L. Henkin
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